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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOEL P. WHITNEY,

Plaintiff - Appellant,

v.

SIMONSEN; et al.,

Defendant - Appellee.

No. 08-15165

D.C. No. CV-06-01488-FCD

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of California  
Frank C. Damrell, District Judge, Presiding

Submitted February 23, 2008<sup>\*\*</sup>

Before: KOZINSKI, Chief Judge, HAWKINS and GOULD, Circuit Judges.

Appellant's motion for appointment of counsel is denied. No motions for reconsideration, clarification, or modification of this denial shall be filed or entertained.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). The district court properly dismissed the action because Whitney did not properly exhaust administrative remedies before filing his complaint in federal court. *See Ngo v. Woodford*, 539 F.3d 1108, 1110 (9th Cir. 2008).

Accordingly, we summarily affirm the district court's judgment.

All other pending motions are denied as moot.

**AFFIRMED.**